

§ 1155.27

(i) Unreasonably burden the interstate transportation of solid waste by railroad; or

(ii) Discriminate against the railroad transportation of solid waste and a solid waste rail transfer facility.

(6) A land-use-exemption permit will not exempt a State requirement that a rail carrier comply with an environmental, public health, or public safety standard that falls under the traditional police powers of the State unless the requirement is unreasonably burdensome to interstate commerce or discriminates against rail carriers.

(7) A land-use-exemption permit will only exempt State, local, or municipal laws, regulations, orders, other requirements, or portions thereof, affecting the siting of the solid waste rail transfer facility.

(c) *Considerations.* As required by 49 U.S.C. 10909(d), the Board will consider and give due weight to the following, as applicable:

(1) The land-use, zoning, and siting regulations or solid waste planning requirements of the State or State subdivision in which the facility is or will be located that are applicable to solid waste transfer facilities, including those that are not owned or operated by or on behalf of a rail carrier;

(2) The land-use, zoning, and siting regulations or solid waste planning requirements applicable to the property where the solid waste rail transfer facility is proposed to be located;

(3) Regional transportation planning requirements developed pursuant to Federal and State law;

(4) Regional solid waste disposal plans developed pursuant to Federal or State law;

(5) Any Federal and State environmental protection laws or regulations applicable to the site;

(6) any unreasonable burdens imposed on the interstate transportation of solid waste by railroad, or the potential for discrimination against the railroad transportation of solid waste, a solid waste rail transfer facility, or a rail carrier that owns or operates such a facility; and

(7) Any other relevant factors, as determined by the Board.

(d) *Permits.* If the Board grants a land-use-exemption permit for a solid

49 CFR Ch. X (10–1–12 Edition)

waste rail transfer facility, all State laws, regulations, orders, or other requirements affecting the siting of a facility are preempted with regard to that facility. Inasmuch as the Board has discretion to require compliance with State requirements affecting the siting of a facility pursuant to 49 U.S.C. 10909(f), a Board-issued land-use-exemption permit will require compliance with such State laws, regulations, orders, or other requirements not otherwise expressly exempted in the permit unless the Board determines otherwise.

§ 1155.27 Petitions to modify, amend, or revoke a land-use-exemption permit.

General rule. Petitions to modify, amend, or revoke land-use-exemption permits shall be decided in accordance with the Board's normal standard of review for petitions to reopen administratively final Board actions at 49 CFR 1115.4. The petition must demonstrate material error, new evidence, or substantially changed circumstances that warrant the requested action, and is subject to these additional conditions:

(a) An entity that petitions for a modification or amendment requesting an expansion of Federal preemption or the facility's operations or physical size is subject to the notice and application requirements in this subpart C. The language of the notifications shall be modified to note that the petition is for a modification or amendment.

(b) The Board will approve or deny petitions to modify, amend, or revoke a land-use-exemption permit within 90 days after the full record for the petition is developed.

APPENDIX A TO PART 1155—FORM NOTICE OF INTENT TO APPLY

Docket No. FD _____ (Sub-No. _____)

Notice of Intent to apply for a land-use-exemption permit for a solid waste rail transfer facility.

(Name of Applicant) gives notice that on or about (insert date application will be filed with the Board) it intends to file with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423, an application for a land-use-exemption permit for a solid waste rail transfer facility as defined in 49 U.S.C. 10908(e)(1)(H) and 49 CFR 1155.2. The solid waste rail transfer facility, owned by